IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY EIGHTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION NO : 3647 of 2005

Between:

Smt. G. Sunkamma W/o late Anguppa,
R/o Jallipalli Village, Kudari Mandal, Anantapur District

..... PETITIONER

AND

1 The Mandal Revenue Officer, Kudari Mandal, Ananthapur District
2 K. Sidda Reddy S/o Late Linga Reddy Jallipalli Village, Kudari Mandal, Ananthapuram

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of a Writ of Mandamus declaring the action of the 1st respondent in issuing proceedings in Rc. 58/2005, dt 15-02-2005 as illegal arbitrary and violative of Articles 14, 21 of the Constitution of India and also being violative of Express provisions enunciated under Act 10/2002 and consequently direct the 1st respondent not to interfere with the possession and enjoyment of the bore well, belonging to the petitioner, which he has dug in Sy. No. 55-2 in Korrakodu village, Kudair Mandal and Anantapur District, and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner : MR. KUNCHE MAHESWARA RAO

Counsel for the Respondent No.1: GP FOR REVENUE

The Court at the stage of admission made the following :

THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.3647 OF 2005

ORDER:

The petitioner claims to be the owner of the land to an extent of Ac.1.76 cents situated in Sy.No.55/2 of Korrakodu Village, Kudair Mandal, Ananthapur district.

This writ petition is filed aggrieved by the order passed by the 1st respondent – Mandal Revenue Officer, dated 15-02-2005 purported to be in exercise of power under Section 15 (1) of The Andhra Pradesh Water, Land & Trees Act, 2002 (for short, 'the Act'), directing the Mandal Revenue Inspector-I, Kudair to seize the bore-well drilled by the petitioner in the land in question and directing her to stop the extraction of water.

A perusal of the said order shows that the 2nd respondent herein made a

representation stating that the son of the petitioner by name Gorava Mallaiah has drilled a bore-well in the land in question unauthorisedly and requesting to take the necessary action. In pursuance thereof, the Mandal Revenue Inspector, Kudair has made an enquiry and it was found that Gorava Mallaiah and Gorava Papanna have drilled a new bore-well unauthorisedly adjacent to existing bore-well of K.Siddha Reddy in his patta land in Sy.No.57 which resulted in decrease of flow of water from the bore-well of K.Siddha Reddy. It is also stated that drilling of new bore-well by Gorava Mallaih and Gorava Papanna at a distance of 77 feet from the existing bore-well without valid permission as specified under Section 10(3) of the Act was in contravention of Section 10(2) of the Act and accordingly the Mandal Revenue Inspector was directed to seize the bore-well and stop extraction of water and report compliance.

The said order is under challenge in this writ petition contending inter alia that before passing the said order, no enquiry was conducted by the 1st respondent an at any rate no opportunity was afforded to the petitioner at any point of time to rebut the allegation made by the 2nd respondent.

The learned Counsel for the petitioner contends that the impugned order passed by the 1st respondent unilaterally being contrary to the procedure prescribed under Section 15(1) of the Act is *per se* illegal apart from being violative of the principles of natural justice and therefore the same is liable to be set aside on that ground alone. The learned Counsel also contended that Section 10(2) of the Act is not at all attracted to the case on hand since the existing bore-well is not a public drinking water source. He also contends that the Mandal Revenue Inspector has never conducted any enquiry and therefore the report said to have been submitted by him cannot be taken into consideration and on that ground also the impugned order being arbitrary and illegal, is liable to be set aside.

Though no counter-affidavit is filed on behalf of the 1st respondent – Mandal Revenue Officer, the learned Government Pleader for Revenue, under instructions, states that it is a fact that the Mandal Revenue Inspector has not issued any notice to

the petitioner before submitting his report on the complaint made by the 2nd respondent.

The 2nd respondent filed a counter-affidavit stating that since admittedly the petitioner has dug the bore-well within the prohibited area, thereby affecting the standing crop on his land in Sy.No.57, the 1st respondent has rightly passed the impugned order directing seizure and the same does not warrant any interference by this Court.

The learned Counsel for the 2nd respondent vehemently contended that since an alternative remedy of Appeal is available under the Act against the impugned order passed by the 1st respondent, without exhausting the said alternative remedy, the petitioner cannot maintain this writ petition.

A perusal of the relevant provisions under the Act shows that under Section 10 of the Act no person shall sink any well in the vicinity of a public drinking water source within a distance of 250 mts. However, Sub-section (2) of Section 10 of the Act provides that any person who intends to sink a well for purpose of irrigation or drinking or for any other purpose within the prohibited distance has to apply for permission to the authority in the manner prescribed. On receipt of such application, the Authority for the reasons to be recorded in writing grant permission if it is satisfied that such sinking shall not adversely affect the public drinking water source. It is also relevant to note that under Section 15 of the Act wherever it appears to the Authority that any well has been sunk or is being sunk in contravention of any of the provisions of the Act, the authority may enter upon the land and remove the obstructions, if any, and close the pumping of water and seize any material or equipment used in connection therewith. While interpreting Section 15 of the Act read with Rule 15 of the Rules made thereunder this Court in P.NARAYANA REDDY v. MANDAL REVENUE OFFICER, MORTHAD MANDAL, NIZAMABAD, held that the issuance of notice before passing provisional order under Section 15(1) of the Act is mandatory.

Nothing has been placed before this Court to show that the petitioner was issued any notice before passing the impugned order. Hence, as rightly contended by the learned Counsel for the petitioner, the impugned order is liable to be set aside on that ground alone. Since the impugned order is in violation of the principles of natural justice, I am also of the view that the availability of alternative remedy of appeal is not a bar to exercise the power under Article 226 of the Constitution of India.

Accordingly, the impugned order is set aside and the Writ Petition is disposed of leaving it open to the 1st respondent to pass appropriate orders afresh after affording due opportunity to the petitioner to explain the allegations and after making due enquiry as prescribed under the Act. Till such time, the respondents are directed not to interfere with the bore-well dug in the land of the petitioner. It is made clear that this Court has not expressed any opinion on other contentions raised by the petitioner and it is open to the 1st respondent to consider all the grounds urged independently and to pass appropriate orders in accordance with law.

The Writ Petition is accordingly disposed of. No costs.

_____

28th March, 2005.

To

1 The Mandal Revenue Officer, Kudair Mandal, Ananthapur District
2. Two CCs to G.P. for Revenue, High Court of AP Bldgs, Hyderabad (OUT).

3. 2 CD copies